

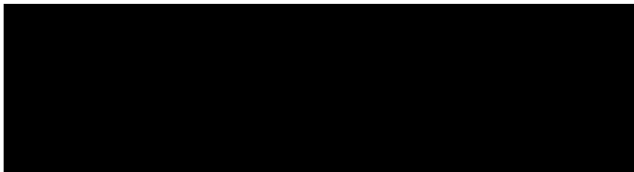
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: WAC-01-218-51691 Office: California Service Center

Date:

JUL 11 2003

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



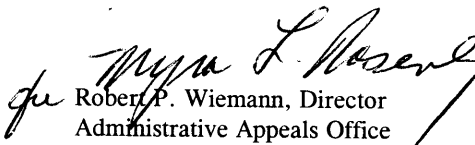
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4). The church seeks to employ the beneficiary as an "Education Evangelist."

The director denied the petition finding that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification.

On appeal, an official of the petitioner asserted, in pertinent part, that the beneficiary's job title has been changed from Education Evangelist to Christian Education Director, but that the job duties have remained the same. The petitioner further contends that a religious instructor is considered by the Bureau to be a qualifying religious occupation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner did not provide a description of the size of its congregation or the number of employees. The beneficiary is described as a native and citizen of Korea who was last entered the United States in February 1999.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

An issue to be considered is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

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(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and show that their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The duties of the proposed position are to provide instruction, guidance and leadership to Sunday school teachers and students, provide students with Bible study textbooks, and develop Bible study and youth counselling guidelines for Sunday school teachers. The petitioner asserts that this would be a full-time permanent position.

After a review of the record, it is concluded that the petitioner has not established that the proposed position constitutes a

qualifying religious occupation, the name change of the position on appeal notwithstanding.

First, the petitioner submitted no documentation that the position is a traditional full-time paid occupation in its denomination. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, the petitioner gave no indication that it has ever employed a member in this capacity in the past and gave no explanation of its decision to do so at this time. The small size of the petitioner's congregation (less than 50 members on the submitted church membership list) raises a substantial question of credibility in advancing the claim that the position of "Education Evangelist," or "Christian Education Director" directing Sunday school classes and providing guidelines for youth counselling, could reasonably constitute a full-time position.

Third, in the instant case, the duties of an education evangelist do not constitute the duties of a qualifying religious occupation as contemplated by the regulations. The petitioner has not established that the beneficiary has completed any prescribed courses of training established by the governing body of the denomination, or that he has undergone other specialized training providing him with qualifications required by or unique to the position. It cannot be concluded that the duties of the position are necessarily dependent on any religious background or prescribed theological education. The "Certificate of Evangelist" submitted without any course description or schedule is not sufficiently probative to determine the beneficiary is specially trained for the position of education evangelist. Furthermore, it has not been demonstrated that the performance of the duties are directly related to the creed and practice of the denomination. Accordingly, it must be concluded that the petitioner has failed to establish that the position of education evangelist constitutes a qualifying religious occupation within the meaning of section 101(a)(27)(C) of the Act.

The petitioner must establish that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on June 22, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least June 23, 1999.

As part of this requirement, the petitioner submitted evidence that the beneficiary was employed by [REDACTED] from March 1999 to December 1999 as an "Education Evangelist." However, the petitioner has provided no evidence that such employment was in a full-time paid capacity or the specific date the employment ended.

Furthermore, the petitioner has failed to state the beneficiary's means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as tax documents, the Service is unable to determine whether the beneficiary was engaged in a religious or a secular occupation, during the two-year qualifying period.

A petitioner also must demonstrate its ability to pay the proffered wage.

8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner furnished a 2000/2001 budget statement that does not reflect any funds having been budgeted for the position of education evangelist or Christian education director. The statement does, however, include \$13,200.00 for a "Sunday School Director." Based on the aforementioned, the petitioner has not demonstrated its ability to pay the beneficiary \$18,000.00 per year as claimed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.